IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.A No.524 of 2004

Decided on : September 11, 2007

Gurdev Singh **…Appellant.**

Versus

State of H.P. **…Respondent.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

The Hon'ble Mr. Justice Surinder Singh, Judge.

Whether approved for reporting?

For the Appellant : Mr. Ravinder Thakur, Advocate.

For respondent : Mr. Som Dutt Vasudeva, Additional Advocate General, with Mr. D.S. Nainta, Deputy Advocate General.

Surjit Singh, Judge(Oral)

Heard and gone through the record.

2. Appellant is aggrieved by the judgment of the trial Court whereby he has been convicted of an offence punishable under Section 302 IPC and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.10,000/-, in default of payment of fine to undergo simple imprisonment for one year.

3. Appellant was tried for the offence of murder on the following allegations. On 20th October, 2001 around 1 p.m., appellant asked his mother Vidya Devi (PW-1) to prepare tea for him. He was told that tea would be served after some time, when it was prepared for all the members of the family. This angered the appellant. He picked up an axe and started giving beating to his mother. His wife, Rachna Devi (deceased) and her sister Jamna Devi (PW-17), married to a

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Whether reporters of the local papers may be allowed to see the judgment?

brother of his, intervened to rescue their mother-in-law. The appellant then dealt a blow of axe on the chest of his wife Rachna Devi, which cut through one of the lungs, as a result of which she died within a few hours.

4. During the course of trial plea was taken that the appellant had been suffering from insanity and he happened to commit the offence in a fit of insanity. It was alleged that the appellant was incapable of defending himself due to insanity. Trial Court made inquiry about the claim of the appellant that he was incapable of defending himself because of insanity and found that he was in fact of unsound mind. He was sent to Mental Health Hospital, Benaras, for treatment. After the authorities of the said hospital certified that the appellant had recovered from insanity, he was put on trial.

5. Trial Court has convicted the appellant with the finding that there is no evidence suggesting that he was suffering from insanity at the time of the commission of the act.

6. Learned counsel representing the appellant has made two-fold submissions. His first submission is that the evidence on record, in the form of the testimony of the mother of the appellant, namely PW-1 Vidya Devi, and his sister-in-law Jamna Devi (PW-17), suggest that he had been suffering from insanity at the time when the act was committed.

7. It is true that both the witnesses have stated that the appellant had been undergoing treatment for mental ailment prior to the occurrence and that he used to get infuriated over trivial things, but no definite evidence has come on record that he was suffering from insanity at the relevant time. Several witnesses from the village of the appellant were examined to prove some other facts pertaining to the

matter. No suggestion was thrown to any of those witnesses in the course of their cross-examination that the appellant had been suffering from insanity or had been having fits of insanity at the relevant time and used to turn violent. Vidya Devi (PW-1) and Jamna Devi (PW-17), being close relatives of the appellant, were supposed to have testified about his plea of insanity to save him from punishment and, therefore, their testimony, without corroboration by any medical evidence or the evidence of independent witnesses from the village/locality, cannot be made the basis to hold that the appellant was in fact of unsound mind and incapable of understanding the nature of his act, when the offence was committed.

8. Next submission made on behalf of the appellant is that his act is not covered by any of the four clauses of Section 300 of the Indian Penal Code and, therefore, it is not punishable under Section 302 of the Indian Penal Code but under Section 304, second part. The submission appears to have merit in it. Appellant was assaulting his mother with an axe in his hand when the deceased and PW-17 Jamna Devi intervened and enraged by this intervention the appellant dealt a blow of axe on the chest (right side) of his wife. Therefore, it cannot be said that he intended to kill her or intended to cause a bodily injury he knew would result in death or intended to cause bodily injury which was sufficient in the ordinary course of nature to cause death or he knew that the injury was so imminently dangerous that it must, in all probability, cause death or such bodily injury as was likely to cause death. Of course, he can be presumed to have had the knowledge that the blow could prove fatal and, therefore, his act amounts to culpable homicide not amounting to murder punishable under Section 304, second part.

9. In this view of the matter, we find support from the following precedents. (1) *AIR 1981 SUPREME COURT 1552, Jagrup Singh v. The State of Haryana*; (2) *AIR 1983 SUPREME COURT 284, Jawahar Lal and another vs. State of Punjab;* (3) *AIR 1983 SUPREME COURT 463, Jagtar Singh v State of Punjab;* (4) *(1981) 4 Supreme Court Cases 245, Kulwant Rai v. State of Punjab;* (5) *AIR 1997 SUPREME COURT 687, Mavila Thamban Nambiar v. State of Kerala;* and (6) *Latest HLJ 2007 (HP) 551 (HP High Court – DB), Sanjay Kumar v State of Himachal Pradesh.*

10. As a sequel to the above discussion, we partly accept the appeal, set aside the conviction and sentence of the appellant for offence punishable under Section 302 IPC, as ordered by the trial Court, and instead convict him of the offence punishable under Section 304, second part, IPC and award the sentence of seven years rigorous imprisonment and a fine of Rs.5,000/-, in default of payment of fine rigorous imprisonment for a further period of one year.

11. Appeal stands disposed of.

(Surjit Singh), J

September 11, 2007(sd) **(Surinder Singh), J**